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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/626,918

07/24/2003

David P. Schneider

H-560-CIP

2407

41245

7590

07/22/2005

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EXAMINER

BASINGER, SHERMAN D

ART UNIT

PAPER NUMBER

3617

DATE MAILED: 07/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/626,918	Applicant(s) SCHNEIDER, DAVID P.	
	Examiner Sherman D. Basinger	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-8,10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-8,10 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 18, 2005 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made:

3. Claims 1, 4, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iler in view of GB 2 176 732 A and Schneider.

Iler discloses a rescue flotation buoy 10 which can contain both shark repellent and a knife.

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GB 732 discloses a pressurized repellent material containment and dispensing device 1 having a proximal end and a distal end and disposed at the proximal end 151 a dispensing means for serially dispensing multiple applications of shark repellent material with each one of said multiple applications being effective in repelling a shark. The description in lines 44-58, page 2 anticipates dispensing of a shark repellent in serially multiple applications each effective in repelling a shark. That an application of repellent is effective in repelling a shark is supported by lines 53 and 54 of page 2 of GB 732. That serial multiple applications can be dispensed is at least supported by lines 55-58 of page 2. One application would empty the container. The container would be filled and emptied for a second application. These applications would make up serial multiple applications. Further, from 44-58 of page 2, it is clear that GB 732 anticipates the dispensing of multiple applications serially before the container is emptied. The providing of a pressure gauge to indicate when the gas and repellent is insufficient indicates that it is not expected to empty the container with one dispensing.

Iler does not disclose a pressurized repellent material containment and dispensing device being internally incorporated into the rescue flotation buoy during use and being detachably integrated with said rescue flotation buoy 10.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to provide the buoy 10 of

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Iler with a knife similar to that of GB 732 such that the knife, which is the pressurized repellent material containment and dispensing device, is both detachably integrated with the rescue flotation buoy of Iler and internally incorporated into the rescue flotation buoy of Iler during use. Motivation to do so is found in the fact that buoy 10 of Iler can contain a knife and in that the knife of GB 732 can be used to repel sharks.

GB 732 discloses a shark repellent material in container 1-see page 2, lines 40-45.

The shark repellent material used by GB 732 is not sodium lauryl sulfate. Schneider, discloses the use of such material as a shark repellent. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to use as the shark material in the knife provided to Iler in view of GB 732 sodium lauryl sulfate in view of Schneider using such material as a shark repellent. That this chemical is harmless to humans provides ample motivation to use it as a repellent.

The environmentally rugged rigid low cost foamed plastic material is foam material 50 of Iler. To make this foam of foamed polystyrene, foamed polyurethane or foamed polyvinyl chloride would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Motivation to do so is that such foams are well know closed cell foams easily attainable.

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4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2 176 732 A in view of Schneider.

GB 732 discloses a shark repellent apparatus comprising:

a) a pressurized repellent material containment and

dispensing device having a proximal end and a distal end 1;

and

b) dispensing means 151 for serially dispensing multiple

applications of shark repellent material, disposed at said

proximal end of said containment and dispensing device with each one of said multiple

applications being effective in repelling a shark. The description in lines 44-58, page 2

anticipates dispensing of a shark repellent in serially multiple applications each effective

in repelling shark. That an application is effective in repelling a shark is supported by

lines 53 and 54 of page 2 of GB 732. That serial multiple applications can be dispensed

is in the least supported by lines 55-58 of page 2. One application would empty the

container. The container would be filled and emptied for a second application. These

applications would make up serial multiple applications. Further, from 44-58 of page 2,

it is clear that GB 732 anticipated the dispensing of multiple applications serially before

the container is emptied. The providing of a pressure gauge to indicate when the gas

and repellent is insufficient indicates that it is not expected to empty the container with

one dispensing.

The shark repellent material is disclosed on page 2, lines 40-45.

The shark repellent material used by GB 732 is not sodium lauryl sulfate. Schneider, discloses the use of such material as a shark repellent. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to use as the shark material in the knife provided to Iler in view of GB 732 sodium lauryl sulfate in view of Schneider using such material as a shark repellent. That this chemical is harmless to humans provides ample motivation to use it as a repellent.

5. Claims 7, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sabo in view of Kea, GB 2 176 732 A and Schneider.

Sabo discloses a flexible flotation vest with a pocket or container for shark repellent-see column 5, lines 40-45. Sabo does not disclose his vest as being auto inflating. Kea discloses a flotation jacket which is auto inflating and which provides an area 34 for a shark repellent. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to use auto inflation structure similar to that of Kea with the vest of Sabo. Motivation to do so is to have the vest of Sabo inflate automatically when the pilot hits the water incase the pilot is unable to activate inflation of his vest.

While Sabo discloses that his vest has a container or pocket for shark repellent, Sabo does not disclose a pressurized repellent material containment and dispensing device having a proximal end and a distal end, said containment and dispensing device being detachably

connected to said flotation vest; dispensing means for serially dispensing multiple applications of repellent material with each one of the multiple applications being effective in repelling a shark; and a shark repellent material disposed in said containment and dispensing device.

Note container 1 of GB 732. The description in lines 44-58, page 2 of GB 732 anticipates dispensing of a shark repellent in serially multiple applications each effective in repelling shark. That an application is effective in repelling a shark is supported by lines 53 and 54 of page 2 of GB 732. That serial multiple applications can be dispensed is in the least supported by lines 55-58 of page 2. One application would empty the container. The container would be filled and emptied for a second application. These applications would make up serial multiple applications. Further, from 44-58 of page 2, it is clear that GB 732 anticipated the dispensing of multiple applications serially before the container is emptied. The providing of a pressure gauge to indicate when the gas and repellent is insufficient indicates that it is not expected to empty the container with one dispensing.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to provide in the pocket or container for shark repellent of Sabo a knife similar to that of GB 732. Motivation to do so is that not only will the knife provide shark repellent, but it will provide a means for performing other forms of survival work.

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The shark repellent material used by GB 732 and Sabo is not sodium lauryl sulfate.

Schneider discloses the use of such material as a shark repellent. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to use as the shark material in the knife provided to Sabo in view of GB 732 sodium lauryl sulfate in view of Schneider using such material as a shark repellent. That this chemical is harmless to humans provides ample motivation to use it as a repellent.

With regard to claim 8, the flexible tube will be as 15 of GB 732, and the nozzle will be as 151 of GB 732.

With regard to claim 10, the grip means is as 413 of GB 732 and the dispensing valve means is as 4123 and 4124 of GB 732.

Response to Arguments

6. Applicant's arguments filed May 18, 2005 have been fully considered but they are not persuasive. First of all, the limitation "said containment and dispensing device being internally incorporated into said rescue flotation buoy during use" is made obvious by the placement of the knife of GB 732 in the survival container of Iler. When the knife is in the container, and the container is being used as in figure 1 of Iler, both the knife and the container are in use, and the knife is internal of the container and, therefore, incorporated into the container.

7. The limitation "each one of said multiple applications being effective in repelling a shark" adds nothing that isn't anticipated by GB 2 176 732. First of all, applicant is urging allowance of the claims, not on structure, but on an intended use which is relative

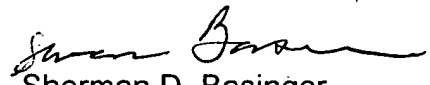
in nature and can continuously change. There is nothing to specifically set forth how much of repellent dispensed from the knife of GB 732 is going to be sufficient to repel a shark. In one instance, a shark may be repelled by a very minute amount. In another instance, it may take more repellent being dispensed from the knife-maybe all of it. Lines 54-58 page 2 of GB 732 in the least anticipates "each one of said multiple applications being effective in repelling a shark". If a diver empties the knife to repel a shark this would be one application. Filling the knife and again emptying the knife to repel a shark would be another application. During this a third time would be multiple applications each repelling the shark. Thus, in this manner GB 732 anticipates the limitation in question. However, because the push button 41 of GB 732 can be used to dispense a limited quantity of the shark repellent, multiple dispensings can be undertaken. In some instances, each limited dispensing could repel a shark. For these reasons, it would be questionable to allow the claims based on the limitation in question.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherman D. Basinger whose telephone number is 571-272-6679. The examiner can normally be reached on Monday through Friday, 5:30 a.m. to 2:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Sherman D. Basinger
Primary Examiner
Art Unit 3617
7/21/05

Thursday, July 21, 2005